

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

No. 1:10-CR-003461-001 JH
No. 1:16-CV-00697 JH/LF

JOHN ANZURES,

Defendant/Petitioner.

ORDER GRANTING LEAVE TO FILE SURREPLY

THIS MATTER comes before the Court on United States' Motion for Leave to File Surreply filed April 5, 2017. Doc. 59.¹ Petitioner John Anzures filed a response to the motion on April 6, 2017. Doc. 60. The United States has not filed a reply, and none is necessary. The Court, having reviewed the motion and response, and the relevant law, finds that the motion is well taken and will be GRANTED.

Local Civil Rule 7.4(b) states that the filing of a surreply requires leave of court. The decision to grant the filing of a surreply is within the court's sound discretion. *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998). When a moving party raises new material or new arguments in a reply, the Court has the option of either disregarding the new material and arguments, or allowing the nonmoving party to file a surreply. *See Doebele v. Sprint/United Management Co.*, 342 F.3d 1117, 1139 n.13 (10th Cir. 2003). "Generally, the nonmoving party should be given an opportunity to respond to new material raised for the first time in the movant's reply." *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005). Courts also may permit a

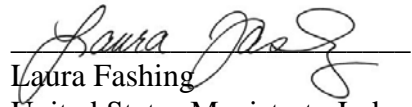
¹ Citations to "Doc." refer to the document number in the criminal case, CR 10-3461 JCH, unless otherwise noted.

movant to file a response to a surreply. *See Barreras v. Travelers Home and Martine Ins. Co.*, No. 12-cv-00354-KG-LF, Doc. 188 at 2 (D.N.M. Dec. 16, 2015) (unpublished).

The United States seeks leave to file a surreply to address a new argument raised by Anzures in his reply, and to address on-point case law that has developed since the United States' initial response. Doc. 59 at 1. Anzures opposes the motion, arguing that his reply to the government's answer to his petition made no new arguments, but simply challenged the arguments raised by the government. Doc. 60 at 1–2. Nonetheless, Anzures requests the opportunity to respond to the surreply should the Court grant the United States' motion. *Id.* at 3.

The Court finds that a surreply is appropriate in this case. Anzures will have the opportunity to respond to the surreply.

ITS IS THEREFORE ORDERED that the United States's Motion for Leave to File Surreply (Doc. 59) is GRANTED. The Court will consider the government's surreply, which is attached as the exhibit to its Motion for Leave to File Surreply. *See* Doc. 59-1. Anzures will file his optional response to the surreply no later than **Friday, May 12, 2017**. Anzures's response shall not exceed five pages. No further filings will be permitted except under D.N.M.LR-Civ. 7.8.


Laura Fashing
United States Magistrate Judge